IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

Manoj Singh vs. 1. State of Rajasthan
2. Jai Narain Vyas University
3. The Council of Architecture

D.B.CIVIL SPECIAL APPEAL NO.292/2007
in
S.B.CIVIL WRIT PETITION NO.6560/2005
&
S.B.CIVIL WRIT PETITION NO.6560/2005

DATE OF JUDGMENT : 4th December, 2007

P R E S E N T

HON'BLE MR.JUSTICE RAJESH BALIA, Actg.C.J.

HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.M.Mridul Sr.Advocate assisted by
Mr.Ashok Choudhary, for the appellant.
Mr.D.C.Sharma, for the respondent no.2.
Mr.Naveen R.Nath,]
Mr.B.V.Thanvi,] for the respondent no.3.

BY THE COURT: (PER HON'BLE RAJESH BALIA, Actg.C.J.)

This writ petition was preferred in 2005 in the circumstances we shall presently notice. After being heard by two learned Single Judges after admission, and once judgment was reserved but the petition was not ultimately decided and when interim relief was refused by the learned Single Judge on 1/3/2007 and directed the petition to be heard in due course, this Special Appeal No.292/07 was preferred against the order dated 1/3/2007.

Looking to the nature of the controversy and urgency of decision & looking to importance of the issue raised, on the request of both the learned counsel the Division Bench passed the following order on 30/8/2007:

> "It is agreed by the learned Advocates appearing in this matter that the matter can be decided finally. Learned advocates for the respondents have stated before the Court that even though this appeal is filed against an interlocutory order of the learned Single Judge, this Court may decide the entire controversy arising in the matter so that the question can be thrashed out at the earliest as the point involved in the matter concerns many students and their future is also dependent on the decision of this Court in this appeal.
>
> Considering the said request of the learned counsel, we deem it proper to decide the matter finally instead of asking the appellant to go back to the learned Single Judge and argue the matter.
>
> Accordingly, this appeal be listed for final disposal on 12th September, 2007."

In the above circumstances, we have heard the learned counsel for the parties on the merit of writ petition itself to decide the same.

Facts leading to this appeal are that Jai Narain Vyas University, Jodhpur is a University set up under the law enacted by State Legislature to set up a University at Jodhpur, under Jodhpur

University Act, 1962 lateron renamed as Jai Narain Vyas University.

The University introduced a 5 years course for awarding a Bachelor's degree in Architecture in the year 1999. The appellant-petitioner was admitted to the course in the very first year of the commencement of new course and completed the 5 years course in 2004 and passed successive term examination of 5 years course. After passing the course, the appellant-petitioner was granted provisional certificate of degree of Bachelor of Architecture by JNV University, Jodhpur on 5th October, 2004.

Thereafter, the petitioner filed an application for his registration as an Architect under the Architects Act, 1972 (hereinafter referred to as the Act of 1972) vide his application dated 3/12/2004 to the Indian Council of Architecture established under the Act of 1972. A reminder was also sent to the Council of Architecture for his registration. Since after acknowledging the receipt of application and reminder nothing happened. Successive reminders were issued on 15th April, 2005 and 19th September, 2005. The last one was by way of demand of justice.

The notice dated 19th September, 2005 was responded by reply dated 30th September, 2005. Relying on Section 21 of the Act of 1972, it was stated that:

> "In order to declare a particular B.Arch qualification as recognized qualification under the Architects Act, 1972 and the Regulation framed

> thereunder, the Architectural Education should be imparted in accordance with the provisions of the Regulations of 1983. This Minimum Standards of Architectural Education could be ensured only by inspection from time to time by the Council of Architecture. Unless and until physical inspections are undertaken by the Council for verification/examination of all matters connected with imparting of education and maintenance of Minimum Standards of Education, the same cannot be said that the institution is imparting an architectural education leading to award of Bachelor's Degree in Architecture carrying recognition under the Architects Act, 1972 and enlist in the Schedule of Qualification appended thereto."

With the aforesaid premise it was stated that since the Council had sought information under Section 18 and required inspection under Section 19 of the Act of 1972, but the University was not cooperating, the University has been already put under `no admission' category for the last five years by the Council. Since University had failed to comply with requirement the application of the petitioner has been kept in abeyance awaiting decision of a writ petition filed in Rajasthan High Court as D.B.Civil Writ Petition No.4466/2001, Suresh Kumar Khemka vs. State of Rajasthan and others, which is pending in Rajasthan High Court.

This led to filing of present writ petition.

Subsequent to rejection of prayer for interim relief vide order under appeal, the respondents have submitted an Addl.Affidavit

dated 9/10/2007 that said application of petitioner appellant for registration as Architect has been rejected as per the decision of Executive Committee of the Council at its 92nd meeting held on 10th September, 2007.

About the writ petition No.4466/2001, Suresh Kumar Khemka vs. State of Rajasthan, we may notice that the writ petition was received as a PIL on a letter petition dated 10/10/2001 by one Shri Suresh Kumar Khemka, Vice President, Students Union, Faculty of Engineering, JNV University, Jodhpur against the Registrar, JNV University and Secretary, Department of Technical Education apprehending that Department of Architecture may be closed by the University. In the said writ petition, the Council of Architecture had made an application to be impleaded as party. The said writ petition was ultimately disposed of vide order dated 13/9/2005 as under:-

> "The only grievance raised raised in this petition in the form and shape of Public Interest Litigation is that there is apprehension that the University may close down the Faculty of Architecture.
>
> Mr.D.C.Sharma, learned counsel appearing on behalf of the University submits that they will not close down the faculty of Architecture without any prior permission of the Court.
>
> Considering the submission and assurance given by the learned counsel for the University, we direct that the Faculty of Architecture should not be closed by the University without any prior permission of the Court.

Accordingly, this petition stands disposed of."

It is contended by learned counsel for the petitioner that since Jai Narain Vyas University is a University established by an act of State Legislature, Bachelor's Degree in Architecture awarded by JNV University is a recognised qualification for the purpose of Act of 1972 in terms of Section 2 (d) read with Schedule annexed thereto. For the purpose of commencement of course of Architecture by any University established under the Legislative enactment, no prior permission is required under the provisions of the Act of 1972 but is a priori recognised qualification for enrolment in the register of Architects by the Council of Architecture constituted under the Act. In the case of University established under the Legislative enactment, the Council's jurisdiction to recognise the qualification for the purpose of registration is not a pre-condition. Such a recognition can be ignored for the purpose of giving registration only if recognition flowing from the Statute is withdrawn under the provisions of Section 20 by amending the Schedule. It is further contended that amending the Schedule is exclusively in the domain of the Central Government and until the Schedule is amended in accordance with provisions of the Act of 1972 in terms of Section 17, any recognised qualification in terms of Section 2(d) of the Act is sufficient qualification for enrolment in the register of Architects. It was pointed out that under Section 25 a person, who is a citizen of India and if he resides or carries on the profession of architect in India and holds the recognised qualification is entitled to have his name entered in the register. On this premise it is contended that

the respondent Council is not entitled to keep the application filed by the petitioner for entering his name in the register of Architects in abeyance and withhold the registration nor can it reject the same until the Bachelor's degree in Architecture issued by the Jai Narain Vyas, University is excluded from the list of recognised qualification by appropriate notification in accordance with the provisions of the Act and Regulation prescribed in furtherance of the Act.

On the other hand, it is contended by learned counsel for the respondent Council that reason stated in the aforesaid communication for keeping the application of the petitioner in abeyance and subsequent rejection of his application was justified since the Council is responsible under Section 21 to prescribe & maintain the minimum standard of architectural education required for granting the recognised qualifications by colleges or institutions in India,the Registrar can decline to register any person if the standard of education imparted by any college or institution do not conform to minimum standard set by the Council. The architectural education imparted by Jai Narain Vyas University has not been recognised by the Council because the University is not cooperating in providing the inspection and furnishing of information to the Council as has been demanded by the Council in terms of Sections 18 & 19 of the Act of 1972. In the opinion of the Registrar the education imparted by the University does not accord with the minimum standard of the Architectural education prescribed by the Council and until the Council is satisfied about the standard of education imparted by the Jai Narain Vyas University, the Registrar

had necessary authority to decline to register the candidate in terms of Section 26 (2) read with Section 21 of the Act.

Learned counsel also stressed that though under Entry 32 in the List II of Seventh Schedule setting up of a University and providing for its functioning may be in the exclusive domain of the State Legislation but under Entry 66 of List I Co-ordination & determination of standard in the Institutions of higher education or research and scientific and technical institutions is within the exclusive domain of the Parliament to provide for the same by statutory provisions. It was urged that since Architects Act, 1972 is an Act enacted by the Parliament, it is within the domain of the Act of 1972 to set up a Council to prescribe minimum standard of education in architecture, which the Council has prescribed and, therefore, to ensure adherence to that and control and regulate the same is within the domain of the Council. Learned counsel was at pains to explain the difference in two legislative fields.

His contention was to the extent that notwithstanding a qualification of B.Arch may be recognised qualification in terms of Section 2(d) read with Schedule, the Council has jurisdiction to deny registration of any person holding B.Arch degree from any institution included in the Schedule even during the period of its continuance in the Schedule to fall within recognised qualification by holding its own opinion about minimum standard of education imparted by the institution. He also went on to contend that in view of these provisions unless the approval of the Council is obtained, no course

in architecture education can be commenced by any institution including the University established by a Statute after the commencement of the Act of 1972. He relied on the following decisions of Supreme Court:

1. Baldev Raj Sharma vs. Bar Council of India & Ors
   (AIR 1989 SC 1541)
2. Union of India & Ors vs. Shah Goverdhan L.Kabra Teachers' College.
   (2002 (8) SCC 228)

3. Bharti Vidyapeeth (Deemed University) & Ors. vs. State of Maharashtra & Anr.
   [(2004) 11 SCC 755]
4. Sanjeev Gupta vs. U.O.I.
   (2005 (1) SCC 45)
5. Prof. Yashpal & Anr. vs. State of Chhattisgarh & Ors.
   (2005 (5) SCC 420)
6. State of Tamil Nadu & Ors. vs. S.V.Bratheep & others
   (2004 (4) SCC 513)
7. Medical Council of India vs. Rajiv Gandhi University of Health Sciences and others
   [2004 (6) SCC 76]
8. Dental council of India vs. Subharti KKB Charitable Trust & Anr.
   [2001 (5) SCC 486]

Learned counsel for the petitioner rejoined that the question of demarcation of legislative powers under List I and List II has no bearing on the controversy raised in this petition inasmuch as no question has been raised about repugnancy between the two

legislations enacted by respective legislatures within their exclusive field of legislative power. He contends that the petitioner is seeking relief only in terms of Act of 1972 not outside it. The question is only to interpret the provisions of the Act of 1972 enacted by the Parliament whether it authorises Registrar not to grant registration in the case of B. Arch. Degree given by a University established under a legislative enactment?

It is not in dispute that Jai Narain Vyas University is a University established under a legislation enacted by Rajasthan Legislature and therefore, the petitioner contends that in view of the provisions of the Act, degree granted by such University in B. Arch. do not call for any further recognition by any process of making application or otherwise from the Council and it is not required that its name be further included in the list of recognised qualification. The Council has only jurisdiction to make a report about standard of education imparted and infrastructure available in the case of any qualification included in the Schedule to the appropriate Government. Thereafter it is for the Central Government to take decision after holding such further inquiry as it deems fit whether to withdraw recognition. If the Central Government so decides, it can do so by amending Schedule by inserting therein that degrees awarded by any concerned institution is recognised only if obtained upto or before specified date. Until that is done the degree granted by the University in B. Arch. is a recognised qualification entitling the holder of such qualification to be enrolled in the register of Architects maintained by the Council. It is in this context a contention has

been raised that the respondents are obstructing the petitioner to carry on the profession of Architecture which he is entitled to take up and which vitally affects his freedom to carry on any occupation, trade or business guaranteed under Article 19(1)(g).

We have given our utmost consideration to the rival contentions raised before us.

Before proceeding further, we may deal with last question raised by the learned counsel for the respondents in the first instance. Apparently, learned counsel for the petitioner is justified in his submission that no question about repugnancy between the provisions of two enactments or the regulations framed by the Council and any provision of the State Legislation or Ordinance or Statute framed by the Jai Narain Vyas University having been raised, the question of examining the field of legislature of the two independent statutes really do not invite attention and the real question is whether in view of the provisions of the Act of 1972, the respondent Council and its Registrar has necessary power to withhold the registration of a candidate or reject such an application for registration, who holds B.Arch. Degree from a university established by a legislative enactment unless such recognition is withdrawn and is excluded from the List of recognised qualification by amendment in the Schedule in accordance with procedure laid down in the Act. Therefore, we need not dwell on this issue any further.

This takes us to notice relevant provisions of the Act of 1972. Section 2 is the definition clause and it defines recognised qualification under Sub-clause (d) as under:-

> "(d) "recognised qualification" means any **qualification in architecture for the time being included in the schedule or notified under section 15**."

Apparently under the Act the recognised qualification is either one which is included in the Schedule or is one notified under Section 15. This takes us to notice Section 15 which provides that:-

> "Central Government may, after consultation with the Council, direct by notification in the Official Gazette, that **an architectural qualification granted by any university or other institutions in any country outside India** in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be recognised qualification for the purpose of this Act or, shall be so only when granted after a specified date or before a specified date."

Under proviso (1) of Section 15 before issuing any Notification notifying any qualification as a recognised qualification under Section 15, the Council is required to be consulted and until the Council is constituted, the expert committee set up under the proviso to Sub-Section (2) of Section 14 is required to be consulted.

Thus, considering the definition and the provisions of Section 15 under which alone the notification of recognising any qualification is required to be issued clearly indicates the division of two types of recognised qualifications under the Act. Section 15 deals exclusively with recognition of qualification vide notification which are granted by University or other institutions situated outside India, in a country with which India does not have scheme of reciprocity for the recognition of architectural qualification. In other words, where a university or institution set up out of India in a country with which India has entered into a reciprocal agreement, the recognition of architectural qualification from such institution is to accord with the scheme of reciprocity, otherwise the qualification in architecture granted by the foreign institution in order to be recognised in India must be under the notification issued by Central Government after consultation with the Council. Section 15 has no application to qualification granted by any College, Institution or University in India.

Apart from Section 15, which obviously relates to qualification issued by foreign institution, the qualification issued by any college, university or institution in India is a recognised qualification only if it is included in the Schedule appended to the Act of 1972 either along with the enactment or subsequently by amendment of the schedule by the Central Government under Section 16. Another provision in this connection which requires consideration is Section 14, which needs to be noticed in extenso,

which reads as under:-

> “14. Recognition of qualifications granted by authorities in India.-
> **(1) The qualifications included in the Schedule or notified under Section 15 shall be recognised qualifications for the purposes of this Act.**
> (2) Any authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognised qualification only when granted after a specified date:
>
> Provided that until the first Council is constituted, the Central Government shall, before issuing any notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette.

Analysis of aforesaid provisions indicates that qualifications included in the Schedule are mandated to be recognised qualification for the purpose of this Act. In other words,

about them no question can be raised except in accordance with the provisions of the Act. Secondly, it also envisages that any authority in India which grants the Architectural qualification not included in the schedule and desirous of recognition of its qualification is to apply to the Central Government to have such recognitions. If such an application is made to the Central Government. It is then for the Central Government after consultation with the Council by Notification in the official gazette to amend the schedule so as to include such qualification therein. Significantly when a Notification is issued under Section 14 (2) for adding an entry in the schedule by amending it, such Notification has also to mention that it shall be recognised only when granted after a specified date that is to say while issuing a Notification under Section 14(2), the Central Government has to specify a date to indicate that the qualification granted after such date only shall be recognised if granted by such institutions included in Schedule by issuing a Notification in that regard. It is not envisaged that all qualifications given by such institution at any time prior to or after the Notification shall automatically recognised in the case of amendment of Schedule under Section 14(2).

This provision has striking similarity of requirement with the provision which permits withdrawal of recognition which already existed in the Schedule or under Notification issued under Section 15. Specification of such date with effect from which the recognised qualification is withdrawn is equally essential under Section 20 so as to ensure that all recognised qualifications under the Schedule are

not automatically derecongnised on withdrawal of its qualification by its exclusion from the Schedule by amendment. Therefore, continuance of recognition once the qualification falls within the definition of recognised qualification or grant of recognition of qualification is an essential part of consideration in amending the schedule by adding new qualification or by withdrawing already recognised qualification. This indicates that once the qualification is included in the Schedule, its status as recognised qualification for the purposes of Act continues until amendment of the Schedule by the Central Government.

Section 14 also reveals important feature of the Scheme of Act of 1972, unlike in the case of other Statutes governing professional qualifications, in that the power of recognising any course not already recognised by inclusion in the Schedule vest in the Central Government and in none else. Mere fact that Central Government has to consult the Council before recognising any course as a recognised qualification by amending the Schedule cannot detract from the fact that ultimate decision to recognise a qualification or not to recognise a qualification vest in the Central Government. It also manifests that expression of recognition of any qualification not included in the Schedule is expressed only by amending the Schedule. So also power to withdraw existing recognition also ultimately vest in Central Govt. And its manifestation has also to be by amending the Schedule. Council has not been given the ultimate authority over maintaining link between standard of education imparted in any institution and its

recognition. This authority vest in Central Govt. Alone. This will further be clear while considering Section 20 which we shall notice shortly.

If in the light of these provisions, one sees the entry in the Schedule, the distinction between entry 1 in the Schedule and other entries becomes very clear. Entry 1 in the schedule reads as under:-

> "**1. Bachelor Degree in Architecture awarded by Indian University established by an Act of the Central or State Legislature**."

Entry 1 clearly indicates recognition of qualification in Architecture conferred by Universities as a class irrespective of the date of its setting up or the date of commencement of any course of qualification by such universities. Bachelor's degree in Architecture (B.Arch) by universities established by an Act of Central or State Legislature is a recognised qualification, a priori vigore. In contrast, all other entries in the Schedule are referable to individual institutions or colleges imparting education in B.Arch.

Apparently, no other view is possible on reading of Section 2 (a) with Schedule that a B. Arch degree awarded by any University established by an Act of Central or State Legislature automatically falls within the recognised qualification irrespective of date when such university had commenced or commences a course of Architecture unless it can be read from any other provision of the Act

that a University established by law before commencing a course for awarding a degree in B.Arch is to seek recognition by making an application to any authority for the purpose of the Act. We find none. Nor any such provision has been brought to our notice by learned counsel.

Sub-section (2) of Section 14, if we may revert to it again, clearly indicates that only such authority is required to make an application for recognition of a course of education imparted by it to the Central Government which authority is not included in the Schedule. A University established by law without any specific reference to any particular University in the Schedule is a generic entry and includes every university established by an act of Legislature whether prior to or after the commencement of the Act. The requirement of amendment of Schedule is not dependent on the commencement of the course by any institution after the commencement of the Act but the necessity for seeking recognition is by those institution who are not included in the Schedule. Since the universities established by law are included in the Schedule as a class and not as an individual university, sub-section (2) of Section 14 cannot apply to the university for the purpose of making an application and seeking recognition of any new course before commencement of such course. Nor the learned counsel for the respondents has been able to show us from any provision that a university is required to make an application before commencement of a course in B.Arch and unless such permission is granted by the Council, such course cannot be commenced. This provision is not

pari materia with provisions made in certain other enactments. Learned counsel for the respondents has cited certain precedents, which we shall advert to little later.

Thus, in our opinion, there being no provision for seeking permission from the Council before starting the course of B. Arch. by a university established by law which as a class has been included in the `recognised qualification' in the schedule along with the enactment of the Act of 1972, the degree in architecture granted by the university is to be treated a priori as recognised qualification because it is given by a university which is authorised by law to grant degrees on its own and there being no other law having overriding effect, it cannot be read by any implication that university established by law under a State legislation imparting education in architecture has first to secure recognition form the Council or permission from the Council before commencement of the course as in the case of commencing course in medical and teachers education.

Once this conclusion is reached, the other conclusion necessarily follows that the B.Arch. degree granted by Jai Narain Vyas University is a recognised qualification for the purpose of the Act of 1972.

We may now examine the scheme of the Act for enrolling any person as an architect in the register of architects by the Council. In that regard. Section 17 of the Act of 1972 reads as

under:-

> “17. Effect of recognition.- Notwithstanding anything contained in any other law but subject to the provisions of this act, any recognised qualification shall be a sufficient qualification for enrolment in the register.

It ordains that any recognised qualification shall be a sufficient qualification for enrolment in the register. Therefore, a person holding recognised qualification is to be treated a sufficient qualification for enrolment in the Register unless any other provision of the Act ordains to the contrary.

In this connection, we may invite attention to the decision of Supreme Court in Dr. B.L. Asawa Vs. State of Rajasthan and others reported in AIR 1982 SC 933. It was a case in which the Rajasthan Public Service Commission has declined to consider the candidature of the petitioner, appellant before the Supreme Court as eligible holding a recognised MBBS degree from a university established by law for seeking appointment as Assistant Professor on the ground that degree granted by University of Bihar has not been declared to be equivalent to the degree granted by University of Rajasthan. This contention has been upheld by the Rajasthan High Court. Reversing the judgment of Rajasthan High Court, the Supreme Court said :-

> “...the declaration of `equivalence' referred to in S.23A of the Rajasthan University Act as well as in clause (vii)of Ordinance No.65

> of the Rajasthan University Ordinances can only be in respect of qualifications other than basic or Post-graduate degrees awarded by other statutory Indian Universities in the concerned subjects. **In the case of a post-graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for.** This is all the more so in the case of a medical degree basic as well as Post-graduate that is awarded by a statutory Indian University and which has been specifically recognised by the Indian Medical Council."

The aforesaid pronouncement of the Supreme Court is clearly indicative of the fact that unless otherwise provided by any other law, a degree granted by university established by law does not call for declaration of equivalence or recognition any more.

In the light of the aforesaid pronouncement, if entry 1 in the schedule is examined, it is clearly in consonance with this general principle that degree awarded by university established by law must ordinarily be presumed to adhere to minimum standard of education required for imparting the course conducted under it and is required to be treated as recognised qualification for that purpose.

The only question, therefore, to be examined is, whether there is anything contrary provided by the law? Once we reach the conclusion that a degree granted by university in B.Arch. is a recognised qualification by virtue of the university being set under an

Act of Legislature in terms of entry (i) in the Schedule appended to Act of 1972, whether the Registrar of the Council or Council can hold otherwise on the ground that the qualification / degree awarded by such university, Jai Narain Vyas University in the present case, does not entitle a person by itself to seek registration as an architect in the register of architects.

Before proceeding further, we may notice the provisions of the Act on which the learned counsel for the respondents relied is Section 21 read with Section 17 and 26 (2) of the Act of 1972.

Section 17 states that notwithstanding anything contained in any other law, but subject to other provisions of this Act', any recognised qualification shall be a sufficient qualification for enrolment in the register. Apparently, overriding effect has been given to the provision of the Act over provisions contained in any other law. The petitioner is not seeking support from any provision other than the Act of 1972 itself. However, learned counsel for the respondents urges that since section 17 is subject to other provisions of the Act, it must be read subject to provisions of Section 21 and 26 as well.

On principle, there cannot be any doubt about it however, the question is whether sections 21 and 26 really yield to the result sought to be brought about by the respondents. It is the core contention of the learned counsel for the respondents that unless the recognised qualification satisfies the test of minimum standard of

Architectural education according to the Council, the Council is not obliged to register a candidate and that discretion is vested in the Registrar once application is received to form an opinion whether a candidate is entitled to have his name entered in the register. In other words the respondents proposition is that though the qualification held by petitioner may be recognised qualification under the Act by its inclusion or continued inclusion in the Schedule, yet Registrar or the Council has discretion to deny the candidate registration because in his/its opinion that such recognised qualification does not deserve to be on recognised list.

The basic fallacy in the contention of learned counsel for the respondent Council is that the Council has not been given power to recognise or derecognise any qualification or to consider the recognised qualification to be not conforming to minimum standard of architectural qualification on its own. On the contrary, recognition of qualification by inclusion in the schedule or vide notification under Section 14 carries with it the basic presumption that recognised qualification conforms to the minimum standard of architectural education. It cannot be presumed that any qualification is recognised without it being conforming to minimum standard of architectural education. Therefore, so long as the qualification stands recognised, it is not open for the Council to contend that qualification being substandard notwithstanding recognised, they are entitled to ignore it as a recognisable qualification. Section 25 under which registration is to be granted reads as under:-

"25.Qualification for entry in register.-A person **shall be entitled on payment of such fee** as may be prescribed by rules to have his name entered in the register, **if he resides or carries on the profession of architect in India** and-

(a) **holds a recognised qualification, or**

(b) does not hold such a qualification but being a citizen of India, has been engaged in practice as an architect for a period of not less than five years prior to the date appointed under sub-section (2) of section 24, or

(c) **possesses such other qualifications as may be prescribed by rules**:

provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification-

(a) recognised under sub-section (1) of section 15 unless by the law and practice of a country outside India to which such person belongs, citizens of India holding architectural qualification registrable in that country are permitted to enter and practise the profession of architect in such country, or

(b) unless the Central Government has, in pursuance of a scheme of reciprocity or otherwise, declared that qualification to be a recognised qualification under sub-section (2) of section 15.

Section 25 by itself give absolute entitlement to holder of a recognised qualification to have his name entered in the register, if he fulfills the two requirements namely (i) if he is a citizen

of India and resides or carries on the profession of architect in India and (ii) holds a recognised qualification. If he does not hold recognised qualification his case falls within sub-clause (b) or (c). Under the aforesaid provisions, no other restriction is imposed either expressly or by necessary implication. Proviso to Section 25(1) is eloquent about mandate of the Act drawing a distinction between a citizen and a non-citizen. It declares that “NO PERSON OTHER THAN A CITIZEN OF INDIA SHALL BE ENTITLED TO REGISTRATION BY VIRTUE OF A QUALIFICATION” It implies that right of a citizen of India, who resides or professes architecture in India and holds recognised qualification has an absolute entitlement to be entered in the register of Architecture on payment of requisite fees.

There is vital difference between the language of Section 25 and Section 26. Section 25 makes an entitlement of a person who is citizen of India, residing in India or carries profession of architect and holds recognised qualification to get his name entered, which is in consonance with the provisions of Section 17 which declares that recognised qualification shall be sufficient qualification for enrolment in the register.

Section 26 operates in a limited field. It applies only in cases where after the date appointed for receipt of **application for registration in the first register of Architects**, all applications for registration shall be addressed to the registrar of the Council and shall be accompanied by such fee as may be prescribed by rules. It

clearly envisages that Section 26 has no operation in respect of registration other than in the first register of architects and sub-section (2) has to be read in that light.

So far as prescribing and maintaining minimum standard of qualification is concerned, Section 21 is to be read along with the entire scheme contained in Sections 18, 19 and 20. Section 18 empowers the Council to require information as to courses of study and examination to be undergone in order to obtain such qualification particularly the age at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification. In other words, obligation to furnish information suo moto is not there for any institution/college, which is already included in the Schedule but it is for the authorities of the Council to require the concerned college/ institution to furnish such information under the enabling provision of Section 18 and it is on such requisition such caller is to furnish the information sought. Those colleges or institutions which are not on the `Scheduled list', desire to have their course to be entered in the Schedule as recognised qualification under the Act too has to make an application to Central Government and not the Council. It is only that in such event Central Government takes further action in consultation with the Council.

Section 19 envisages that Executive Committee of the Council shall subject to regulations if any made by the counsel appoint such number of inspectors as it may deem requisite to

inspect any college or institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that college or institution. The inspection is obviously for the purpose of recommending the case for recognition and can apply to such other institutions only which are not already included in the schedule of recognised qualification. It cannot apply to any institution which is already included in the schedule of recognised qualification. Therefore, section 19(1) cannot be made applicable to universities established by law for the purpose of seeking recommendation for recognition of its qualification.

Sub-section (2) of Section 19 importantly envisages that inspector shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff equipment accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend. On receipt of such report from the inspector, the Executive Committee is to forward a copy of such report to the college or institution and such report is to be forwarded with remarks, if any, of the college or institution to the Central Government. Section 19 does not authorise interference with the conduct of any training or examination, so also the Executive Committee is also not authorised to take any action on the conduct of any training by itself but is required to forward the

copy of the report of inspection with remarks,if any, of the concerned college or institution to the Central Government. This is in consonance with basic premise of the Scheme unfolded in Section 14 about the gamut of including any institution/college in the Schedule which is not included in the Schedule already as part of requisite of consultation by the Central Government before making any amendment in the Schedule.

Section 20 deals with the withdrawal of recognition. It envisages that when upon the report by the Executive Committee it appears to the Council that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution or that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution, do not conform to the standards prescribed by regulations, the Council shall make a representation to that effect to appropriate Government. For the purpose of Section 20, appropriate Government under sub-clause (a) of sub-section (5) in relation to any college or institution established by an Act of Parliament or managed, controlled or financed by the Central Government, is the Central Government and in any other case, the State Government. It is for the appropriate Government after considering such representation of the Council to forward it along with such remarks, it may, to the college or institution concerned, with an intimation of the period within which the college or institution, as the case may be, to submit its explanation to the appropriate Government and on receipt of such

explanation or where no explanation is received from such college or institution within the period allowed, in the case governed by sub-clause (b) of sub-section (5), the State Government shall make its recommendations to the Central Government.

Importantly, sub-section (4) envisages that Central Government **after making such further inquiry as it think fit**, in respect of college or institution in respect of which State Government is the appropriate Government or where Central Government itself is the appropriate Government, after receiving the explanation from the college or institution by notification in the Official Gazette, if it requires any amendment in the Schedule, it direct that entry shall be made in the Schedule against the architectural qualification awarded by such college or institution and in doing so it shall also notify **that it shall be recognised only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.**

Significantly, the provision indicates that recommendation or report of the Council itself is not binding on Central Government. The very provision of furnishing the report to affected college/institution and calling upon its explanation, and further requirement that Central Govt. after holding such inquiry as it thinks fit can take its decision, makes the whole process subject to rule of natural justice and an objective and independent decision making by the Central Government by considering the report of the Council; opinion of the State Government, where State Government is the

appropriate Government; the explanation submitted by the affected college/ institution; and after holding such inquiry as it think necessary are all incidence of an independent objective decision making by the Central Government about amending the Schedule.

Apparently, scheme of Sections 18, 19 and 20 clearly envisages that ultimate decision of recognising or derecognising the qualification in architecture is in the exclusive domain of the Central Government and the Council has only the role of recommendatory body. By itself,it has no authority to recognise or hold that the quality of education or infrastructure provided for granting education is sub-standard. This scheme conclusively shows that the contention of the learned counsel for the respondents that notwithstanding the qualification is included in the Schedule as recognised qualification,it can be ignored by the Council or Registrar on its own opinion about it being a sub-standard qualification for the purpose of denying registration is unsustainable.

Whether the qualification will continue to be recognised or not and if not with effect from what date its recognition shall be cancelled is to be decided by the Central Government by amending the Schedule and it is only on amendment of Schedule, the qualification granted by an institution included in the Schedule shall cease to be a recognised qualification for the purpose of registration with effect from the date notified in the Schedule. At no point of time so long as the qualification remains recognised qualification, Registrar or the Council has authority to deny entitlement to

registration of the holder of such qualification by ignoring the recognised qualification on its own opinion about the standard of qualification or infrastructure available to it, else the very scheme of the Act would be frustrated which gives a detailed procedure in the parent Act itself for derecognising of already recognised qualification so as to disentitle the holder of such qualification to seek registration.

From the additional affidavit submitted on behalf of respondents it appears that in the first instance respondent University had applied to All India Council for Technical Education under the AICTE Act for starting of five years full time course considering that University is also governed by the said Act. The said application was forwarded by the AICTE on 22/4/1997 to the respondent Council of Architecture and after initial evaluation and considering the expert committee report which had visited the University on 26th June, 1998, the AICTE accorded approval to Jai Narain Vyas University to establish and conduct B.Arch course from academic session 1998-99 with intake of 30 students. This has been done on the recommendation of the Council of Architecture. Thereafter, the B.Arch course had been commenced by the University in 1999. The AICTE extended its earlier approval for the succeeding academic year also on 19/8/1999. Thereafter, by letter dated 21st June, 2000, the Council of Architecture has recommended to AICTE for withdrawal of intake from academic session 1999-2000 and issued a show cause notice to the Jai Narain Vyas University.

It also refers to the letter of Council dated 18th July, 2001 recommending that there should be no admission from the academic session 2001-2002. The chronology of events further goes to show that ultimately on 17th December, 2005, the Executive Committee of the Council in its meeting held on 17th December, 2005 resolved for the first time to evoke Section 20 of the Act of 1972 for withdrawal of recognition to B.Arch being awarded to the students trained at the faculty of Jai Narain Vyas University from December, 2003 and onwards and by its resolution dated 3rd April, 2006 the Executive Committee decided to put the JNV University under `no admission' for conduct of B.Arch degree course for academic session 2006-2007 and finally in its 92nd meeting a decision was taken as noticed above.

From the above facts, firstly it becomes clear that the Council of Architecture has been brought into picture only on application moved to AICTE by the University of Jodhpur seeking its permission to commence the course of B.Arch which was wholly mistaken view of law. The Supreme Court in Bharathisnadan case (2001) 8 SCC 676 clearly held that for the purpose of AICTE Act, 1987 University is not required to seek permission of the AICTE before commencing any new course as it has being kept out of the definition of institution explicitly. Even the Council of Architecture had made its recommendation at the initial stage only to AICTE, in furtherance of request made to it for submitting its expert advice but as the university was not amenable to the provisions of Act of AICTE relating to start a new course, any decision taken by the AICTE or

its nominee in this regard cannot affect the validity of commencement of the course of B.Arch by the University of Jodhpur, therefore, initial intervention of the Council of Architecture for the purpose of examining the application submitted by the university for commencement of the course and its recognition itself was brought its scope and could not have yielded to any consequence as it is now sought to be made.

Secondly, according to the chronology of events happening at the Council, Council had ultimately decided to invoke Section 20 of the Act of 1972 only in its meeting held on 17th December, 2005.

We have already noticed the entire gamut of Section 20 requiring for withdrawal of recognition w.e.f. particular date by the Central Government for amending the Schedule. That admittedly has not taken so far, therefore, report by itself cannot yield to any result and the Council cannot on its own take action for denying registration for that reason.

From the chronology of events, it further appears that even according to respondent Council also the admission to B.Arch in JNV was closed for the first time only from the academic session 2003 and atleast the students who were admitted in 1999-2000 under approval from the AICTE on recommendation of the Council, remain unaffected. The petitioner is one of the students who was admitted in 1999 and completed the five years course in 2004 before the Council decided to make a report in 2005 to evoke

Section 20, cannot be denied registration.

Finally, the council sought to invoke Section 20 for withdrawal of recognition of JNV University for the purpose of granting B.Arch qualification only w.e.f. 2005. No action in furtherance of it so far appears to have been taken by the Central Government in terms of Section 20. The petitioner has infact passed out from JNV in 2004 prior to that decision.

Thus, considering from any angle, the petitioner could not have been denied registration by the respondent Council in view of our conclusion reached above or on factual position submitted by them.

An application has been moved on behalf of the respondents that in D.B.Civil writ petition No.4466/2001, which was a Public Interest Litigation, which has been disposed of by order dated 13.9.2005. In the said disposed of writ petition, an application has been moved by the respondent for modification of that order. In further of that application, an application has been moved in this appeal also for deciding the said application dated 26/5/2006, The prayer made in the said disposed of writ petition is to direct no admission be allowed to the University.

As we have noticed in this judgment the requirement of seeking permission from the Council of Architecture or AICTE not being there, the right to close any course run by the university is not

with in the domain of the Council. In that view of the matter any order passed in D.B.Civil Writ Petition No.4466/2001 which was in respect of the different subject matter had no bearing on the controversy raised in this petition. Moreover, the conclusion to which we have reached answers the issue raised in application moved by the respondent Council in D.B.Civil writ petition No.4466/2001 adequately. Said application will be decided independently in that petition otherwise also. Moreover, the Council itself having resolved to invoke Section 20 of the Act of 1972, in 2005 the contention of the respective parties that may arise for consideration for the decision of the Central Government, and the decision which it may ultimately take, need not be preempted at this stage.

In this connection we may also notice that learned counsel for the appellant-petitioner has sought to urge that if the two provisions of AICTE Act, 1987 and the Act of 1972 are read together and under the scheme also keeping in view the specific entry (1) relating to the University and other entries relating to college and institutions, the university must be held to be not falling within the domain of the Council by considering it to be a specie of the Institution. Had it been so, use of word “college and other institution” in juxta-position with University at serial no.1 in Schedule alongwith other entries in Section 18, 19 and 20 would be redundant. If wide meaning of word institution is used in this provision expression 'college' also would become superfluous.

On the other hand, respondents counsel has urged that the

word `institution' is an expression of wide impact to include University. Hence a University must be deemed to be falling within the term of Institution for the purpose of Sections 18, 19 and 20.

We are of the opinion that this controversy need not be examined in this petition as it does not affect the merit of the case in the light of view which we have expressed above. We keep this question open to be answered in appropriate case. Though definitely under the AICTE Act, University is not governed by general provision of the Act except specified provision is made thereunder.

Reliance was also placed in this connection on 2004 (4) SCC 513 [State of Tamil Nadu & Ors. vs. S.V.Bratheep & others] that the University cannot prescribe the minimum standard of education that what has been prescribed by the Council for B.Arch course. We are not called upon in this writ petition to examine the authority of the University to prescribe the course of B.Arch or the standard of course prescribed by the University for the purpose of its recognition. We have also noticed above that a University established by law is supposed to maintain minimum standard of education required for the subject and if its recognition is to be withdrawn, there is certain procedure for it. If the university falls within that domain. That procedure having not admittedly been followed and Schedule of recognised qualification having not been amended, it is premature to enter into this question whether the B.Arch qualification imparted by the University is required to be withdrawn by amending the Schedule and it is preempting the

jurisdiction of the Central Government.

The aforesaid decision deals with the jurisdiction of the Central Govt. to prescribe the course of study for engineering education in Tamil Nadu and the Court has recognised that power to lay down minimum standard of education rests with the AICTE but the State Government's right to prescribe higher standard other than the minimum standard prescribed by the AICTE is not taken away. This controversy about the State's jurisdiction to prescribe qualification of a prescribed standard is not subject matter of the lis in this case. The ratio of the decision in the above case is not applicable.

It is pertinent to notice in this context the grounds on which a person's name can be removed from the register of Architects as spelt out in Section 29 and they may also be taken guidelines for consideration on which a person holding recognised qualification may be denied registration. But where a person is holding recognised qualification, he cannot be denied registration if he makes an application along with fees requisite for such registration only on the ground that qualification held by him does not conform to the standard prescribed by the Council. Sitting over the judgment of recognised qualification so long as it continues to be a recognised qualification for the purpose of enrolment in the register of architects it is not in the domain of the Registrar or the Council to deny or withhold the registration of an applicant under Section 25 of the Act of 1972 is the irresistible conclusion from the

scheme of the Act of 1972.

Apart from the aforesaid facts, it is also pertinent to notice that so far as the parent Act is concerned, it does not prohibit to carry on profession of Architect without registration but only prohibits holding out oneself to be a registered architect without securing registration in the register of architects in accordance with the provisions of the Act of 1972. We are, therefore, of the opinion that this appeal deserves to be allowed.

However, before reaching final conclusion, we may examine the cases cited before us. Though, learned counsel for the respondents has furnished photo copy of 13 judgment, but has confined reference only to aforementioned eight judgments during the course of arguments.

Reliance was placed on Baldev Raj Sharma vs. Bar Council of India & Ors [**AIR 1989 SC 1541**] to urge that the Supreme Court has not considered a person holding a degree in Law from a university entitled to be enrolled as an advocate because he had not obtained the degree by regular attendance for requisite number of lectures, tutorials or moot courts. On this ground, it has been urged that in the like manner if the applicant has not undergone requisite course of study, he should be denied entry into register of Architects.

It may be noticed that considering the scheme of

Advocate Act, 1961 and the Rules framed thereunder, the Court found that Rule 1(1)(c) of Part IV of Bar Council of India Rules, 1975 provides that except as provided in Section 24(1) (c) (iiia) of the Advocates Act, a degree in law obtained from any University in the territory of India after 12th March, 1967 shall not be recognised for the purpose of Section 24(1) (c) (iii) of the Act unless the conditions specified there are fulfilled, which included the condition "that course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot courts in a college recognised by a University" and these rules were replaced by fresh set of Rules in 1984 and the new Rule 1(1)(c) is almost identical.

It is on the face of these Rules which regulate the enrolment of a person as an Advocate entitle to practice in Courts in India, who holds a degree of law. It may be noticed that Bar Council of India is constituted under the provisions of the Advocates Act, 1961. Procedure for enrolment as an Advocate is entirely different. **Section 24 of Advocates Act, 1961 itself authorises the Bar Council of India to lay down the conditions for enrolment in the Rules in addition to the requirement of a degree of law**, and there was no provision in the Act of 1961 like Section 17 of the Act of 1972 that `holding a recognised qualification is sufficient for enrolment in the register of Architects'. On the contrary, Advocates Act envisages amongst other conditions that a person has completed 21 years of age and he has obtained a degree of law from the any university in the territory of India stating further that **`he fulfils such other conditions as may be specified in the**

rules made by the State Bar Council' and that he has obtained the degree of law after 12th March, 1967 , which is recognised for the purpose of this Act by the Bar Council of India. It is in furtherance of this provision that Bar Council of India has framed a rule that a three years course of study of law shall be recognised for the purpose of enrolment of a degree holder as an Advocate provided degree in law has been obtained through regular attendance and participation in lectures, tutorials etc.

It is in the light of aforesaid statutory scheme of Advocates Act that the Court held that before a person can be enrolled, requirement of Section 24(1)(c)(iiia) read with rules framed by the Bar Council of India in this behalf must be fulfilled. Therefore, this case does not offer a parallel to a case of registration in the register of Architects, under the Scheme of Act of 1972.

Learned counsel next drew our attention to a decision of Supreme Court in Union of India & Ors. vs. Shah Goverdhan L. Kabra Teachers' college [**2002 (8) SCC 228**]. In this case, in a group of petitions filed before Rajasthan High Court provision of Section 17 (4) of the National Council for Teacher Education Act, 1993 had been held to be ultra vires by the Court inter alia on the ground that it was impinging on the field exclusively reserved for the State Legislation. However, the Supreme Court upturned the judgment of Rajasthan High Court holding that providing co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions is

within the exclusive domain of the Parliament under Entry 66 of List I of the VII Schedule. The Court said:

> "On examining the statute as a whole and on scrutiny of the object and scope of statute, we have no manner of doubt that even sub-section (4) of Section 17 is very much a law dealing with the coordination and determination of standards in institutions for higher education coming within Entry 66 of List I of the Seventh Schedule and, thus, the Union Legislature did have the competence for enacting the said provision."

The Court further said that :

> ".....NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and Parliament has imposed upon such expert body the duty to maintain the standards of education, particularly, in relation to teachers' education. Education is the backbone of every democracy and any deterioration in the standard of teaching in the B.Ed Course would ultimately produce sub-standard prospective teachers who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends.....It is from this perspective, the conclusion of an expert body should not be lightly tinkered with by a Court of law without giving due weightage to the conclusion arrived at by such expert body."

In view of the above, the Supreme Court held that there was no reasonable justification for not recognising the B.Ed. (Vocation course) which was being imparted by the respondent college.

With utmost respect to the learned counsel, this case has hardly any relevance for present controversy. It is not the case of appellant that any part of the provisions of the Act of 1972 or the regulation framed thereunder are not by competent legislature. On the other hand, the appellant is seeking relief within the framework of law enacted by the Parliament itself. Secondly, scheme of NCTE Act for that matter is again entirely different from the scheme of the Act of 1972.

Sub-section (4) of Section 17 of the Act of 1993 ordains that:

> "If an institution offers any course or training in teacher education after the coming into force of the orde withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central

> Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

Thus sub-section (4) of Section 17 prohibits employment to a candidate holding a qualification in teachers training from unrecognised institution. We are not concerned with such a case nor we have to deal with such provision. Secondly, the scheme of recognising teachers education as unfolded in Chapter IV clearly reveals that an institution imparting or intending to offer a course or training in teacher education it has to make an application for recognition under the Act and only on recognition being granted under the provisions of the Act, the qualification acquired from such institution is recognised as valid qualification for eligibility of a candidate for public employment as a teacher. Section 14 of the Act of 1993 opens with the words that "**Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act,make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations.**"

Thus, under the Act already ongoing courses in teachers education or new courses to be opened all needed to seek recognition by making an application before fruits of such degree could be had by the holder of such qualification obtained after the

appointed date.

As we have seen, we are concerned in this case with the provisions whether an institution already in the Schedule of recognised qualification imparting the course in B.Arch is not required to make an application after commencement of the Act nor any institution intending to commence the course whose degrees were recognised under item no.1 of the Schedule were required to seek recognition before commencement of the course so as to draw parallel with the provisions of the Act conferring power on the Council to deny registration to a person holding valid qualification under the statutory provision.

The next case relied on by the learned counsel for the respondent is Bharti Vidyapeeth (Deemed University) & Ors vs. State of Maharashtra & Anr. [**2004 (11) SCC 755**]. This was a case in which the appellant before the Supreme Court had been granted the status of deemed university under the U.G.C in 1996. Act. Until 1995-96 the Bharti Vidhyapeeth allowed admissions to be made in respective medical, engineering and dental colleges run by it on the basis of CET (Common Entrance Test) conducted by the State authority. Thereafter, on becoming deemed university it has decided to keep itself out of CET conducted by State and challenged the validity of Rules stating that the State Government cannot prescribe those rules. The High Court has dismissed the writ petition stating that the State Government could provide necessary regulation for admission to the institutions within the State. State has relied on

Entry 25 of Concurrent List that there are still certain facets even in cases of institutions governed by Entry 66 List I about which appropriate legislation can be made within the scope of Entry 25 of List III and it is within that sphere the State Government has sufficient power to regulate admissions to a deemed university by framing rules. However, this contention on behalf of the State did not find favour with the Supreme Court and judgment of High Court was set aside.

The Court explaining the expanse of word `coordination' used in Entry 66 held that expression “Coordination” used in List I of Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparties. It will include power to do all things, which are necessary to prevent what would make “coordination” either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given full effect according to its plain and express intention. Within the concepts of coordination and deterioration of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall. Therefore, in any aspect of admission of students in colleges would fall within Entry 66, the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in

Parliament and it falls outside the control of the provisions of Entry 25 of List III.

We do not see how the aforesaid controversy has any relevance to the controversy raised in the present case. It is no part of the contention by anyone that any part of the provision of the Act of 1972 and regulation made thereunder fall outside the purview of the legislative competence of the Central Government. The interpretation of ambit and scope of provision of any enactment on the premise that it has been validly enacted by competent legislation does not give room for argument that whether the council could provide for standard of education in Architecture. The question before us is not that the Council could provide for standard of education to be maintained in B.Arch or not, but the controversy is whether the qualification recognised under the Act could be ignored for the purpose of registration to its holder on the ground that while continuing to be recognised, the qualification is sub-standard. Thus, the above case relied on by the learned counsel, in our opinion, has hardly any relevance to the present controversy.

Next case relied on by the learned counsel is Sanjeev Gupta vs. Union of India [**2005 (1) SCC 45**]. This case relates to the controversy of continuing recognition of certain institutions imparting medical education by erstwhile member States of Soviet Union as a result of disintegration of Soviet Union. After a few rounds of litigation and consideration at various level between the Government and MCI, ultimately the Medical Council of India Act

was amended and provision was made for permitting enrolment of candidates, who had completed various courses of different duration upto particular dated since 1996 on undergoing internship of specified period and through screening test for the purpose. After considering the submissions made before the Court by the writ petitions challenging the prescription of specific date providing the dividing line between the degrees obtained prior to date and subsequent date were dismissed by directing that minutes of meeting held on 30/6/2004 which have been approved by Government of India and MCI for future screening test shall be conducted as per the guidelines laid in the meeting. We are afraid that any part of the ratio emerging from the aforesaid judgment as any relevance for the purpose of deciding the controversy in hand.

The next judgment relied on by the learned counsel for the respondents is 2005 (5) SCC 420 [Prof.Yashpal & Anr. vs. State of Chhattisgarh & ors.]. This decision relates to Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 as amended in 2004, which was held to be colourable piece of legislation by the Supreme Court setting up and recognising large number of institutions as private universities & the Court said:

> "The State Legislature can make an enactment providing for incorporation of universities under Entry 32 of List II and also enactments generally for universities under Entry 25 of List III. However, the UGC Act has been made with reference to List I Entry 66. Entry 66 of List I deals with coordination and determination of

> standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between between the powers of the State and that of the Union. Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament. The use of expression “subject to “ in List III Entry 25 of Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. It is the exclusive responsibility of the Central Government to determine the standards for higher education and the same should not be lowered at the hands of any particular State as it is of great importance to national progress.”

We are unable to see how this decision upholding the supremacy of the Parliament in providing law dealing with the coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has any bearing on the present controversy as the appellant -petitioner is not seeking any relief de hors the law made by the Parliament in that regard.

It will be apposite here to draw attention to yet another decision of Supreme Court in Bharathindasan University and Anr. vs. All India Council for Technical Education and others [**(2001) 8 SCC 676**]. This case relates to the question raised whether the university established by law is required to obtain prior approval of the All India Council for Technical Education under the All India

Council for Technical Education Act, 1987. Repelling the contention of any necessity the Court held:

> "The appellant University is a full-fledged university created under the Bharathidasan University Act and is recognised by UGC also. When the appellant University commenced courses in technology such as Information Technology and Management, Bioengineering and Technology, Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology etc., AICTE filed a writ petition before the High Court seeking a writ of mandamus to forbear the university authorities from running/conducting any courses and programmes in those technical courses. It was contended that the University did not apply for and secure the prior approval for those courses before their commencement by the University as envisaged under the All-India Council for Technical Education Act, 1987 and the statutory Regulations made thereunder by AICTE, particularly Regulation 4, which obligated even a university to obtain such prior approval. The High Court accepted the stand of AICTE by applying and following the ratio of the decision of a Full Bench of the Andhra Pradesh High Court in M.Sambasiva Rao vs. Osmania University and as consequence thereof, ordered the cancellation of the admissions made by the University."

Under Section 10(k), AICTE was authorised to grant approval for new technical institutions and for introducing new courses and programmes after consultation with the agencies

concerned.

When the Bharathidasan University, which is a full-fledged university created under the Bharathidasan University Act enacted by State Legislature and also recognised by UGC as a university, commenced various courses in technology such as Information Technology and Management, Bioengineering and Technology, Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology etc., the Council filed a writ petition before the High Court seeking writ of mandamus to forbear the university from running/conducting any courses and programmes in those technical courses. It was contended that the University did not apply for and secure the prior approval as envisaged under the AICTE Act, 1987 for those courses before their commencement. Attention was invited to the definition of “technical institution” and “University” & it was pointed out that technical institution cannot include a University. The University was specifically excluded and for starting a new technical course by the University, prior approval of the Council was not required. While the Andhra Pradesh High Court has upheld the contention of the Council, the Supreme Court held that Section 10(k) does not cover “university” but only a “technical institution” other than the Universities. It also pointed out that wherever the Council was given any control over the University, a specific provision has been made in that regard.

Incidentally, we may also draw attention to the

provisions of Indian Medical Council Act as during the course of argument, analogy was sought to be drawn with the law relating to medical courses. We may notice the vital distinction in the provisions of Indian Medical Council Act, 1956 in relation to setting up of a Medical College or new course of study and the recognition of colleges or institutions for imparting education in medicine. Before its amendment in 1993 w.e.f. 27/8/1992 the Act provided under Section 11 for recognition of medical qualification granted by Universities or Medical Institutions. It provided that medical qualification granted by Medical Institution in India which are included in the Schedule shall be recognised medical qualification for the purposes of this Act.

Unlike the Indian Architects Act, 1972, the Medical Council Act, 1956 did not recognise the education imparted by Universities established under any legislative enactment as a class but it specifically provided that medical qualification granted by such Universities or Medical Institutions which are included in its Schedule for the purpose of this Act shall be recognised and the Schedule appended to the Medical Council Act, 1956 did not carry a general entry like clause 1 of the Schedule of the Act of 1972 but each and every University for the purpose of recognised qualification has been named separately. Thus, unless name of any particular university whether set up under an enactment or a deemed university was included in the list, any qualification conferred by it in medicinal science was not a recognised qualification.

Moreover, after the amendment, clear provision was made under Section 10-A that notwithstanding anything contained in this Act or any other law for the time being in force- (a) no person shall establish a medical college; or no medical college shall open a new course of study or training including a post-graduate course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the Act. In the Explanation attached to Section 10-A, the definition of "person" includes any University or a trust . Thus, any University intending to start a new course after the commencement of the amended Act is required to acquire prior approval of the Central Government. Therefore, the Scheme under Medical Council Act cannot govern the present controversy by drawing analogy between the two provisions merely on that basis.

Reliance has also been placed on 2004 (6) SCC 76 [Medical Council of India vs. Rajiv Gandhi University of Health Sciences and others]in the written submission. This judgment also in our opinion has no bearing on the controversy raised before us. It relates to the parameters of exercising jurisdiction by the High Courts in making interim order relating to permitting an institution to admit students to medical college which had not been so far recognised by the Medical Council of India even to commence the course and situation arising out of such interim order. We have already noticed that the scheme of Medical Council of India Act which is entirely different from the Scheme of Act of 1972. Even by analogy the ratio

of this decision does not govern the present case.

Reliance has been placed on 2001 (5) SCC 486 [Dental council of India vs. Subharti KKB Charitable Trust & Anr.]. Again this case arise in the background of the Medical Council of India Act in the matter of granting approval in establishing Dental College by the Central Government on the advice of expert committee. This was a case in which while expert body has approved that the Dental college to be set up specifying qualification, criteria for intake of batch of 60 students, the Trust managing the Dental College has sought a mandamus for seeking admission of 100 students to such course. The High Court had accorded approval to the admission to a batch of 100 students. Apparently, this case arose under the Medical Council of India Act where no new course could have been commenced without the permission of the Dental Council of India/Medical Council of India. The case does not offer parallel to the present case. Moreover, the controversy raised was of entirely different nature than what has been raised before us in light of the Act of 1972. The case is clearly distinguishable on facts as well as on law.

This being the position, as we have seen, the Jai Narain Vyas University having been established under the legislative enactment, the qualification granted by the University established under the legislative enactment, having been already included in the list of recognised qualification under Section 2(d) read with annexure and there being no provision for securing prior

approval or recognition before commencing a course in B.Arch, by such university, the Council or its Registrar cannot hold during the continuance of recognised education imparted by the University to be sub-standard and refuse registration on that ground. The university having been included in the annexure of institution where degrees are recognised qualifications and which is granting degrees on its own force in terms of the UGC Act, the contention of the respondents that recognition of qualification is pending before the Council is not tenable. The Council can seek information from the University and inspect the institution where the education is being imparted in order to make its report to the appropriate Government to be dealt with in accordance with the procedure laid down in the Act of 1972 as discussed above. Ultimate decision rests with the Central Government to make or not to make amendment in the Schedule to affect recognition of qualification in architecture granted by the respondent University in accordance with the procedure laid down under Section 20 of the Act, 1972. No action can be taken by the Council by treating the recognised qualification to be not enough for registration. Even withdrawal of recognition is not within the jurisdiction of the Council but rests with the Central Government. Therefore, there being no decision of the Central Government withdrawing recognition, the respondent Council has no jurisdiction to withhold registration on the basis of pending inquiry by it.

In view of the aforesaid, this writ must succeed and action of the respondents in withholding the registration of appellant, who holds a degree in B.Arch from Jai Narain Vyas University, a

University established under the State Legislation, is wholly without jurisdiction. Accordingly, the writ petition is allowed. The decision of the Executive Committee of Council at its 92nd meeting held on10th September, 2007 rejecting the petitioner's application is quashed. The respondents are directed to register the appellant in the register of architects provided he does not suffer from any other disqualification on which the registration can be cancelled.

There shall be no order as to costs.

In view of the above decision in writ petition, D.B.Civil Special Appeal against order dated 1/3/2007 passed by learned Single Judge on prayer for interim relief has become infructuous and the same is hereby dismissed with no order as to costs.

(BHANWAROO KHAN), J. (RAJESH BALIA)Actg. C.J.

Pankaj Baweja